

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5346 OF 2007

Rajendra Tulshiram Jokhar..... Petitioner.
V/s
The Collector, Nashik & Ors.... Respondents.

Mr.P.N.Joshi, Adv. for the petitioner.

Ms.V.SmHaspurkar, AGP For respondent Nos.1 & 5.

Mr.A.S.Desai with Mr.R.N.Gite, Adv. for respondent No.4.

CORAM: A.P.DESHPANDE, J.

24/7/07

PC:

The petitioner is a member of respondent No.3-society which in turn is a members of respondent No.2-federal society. It is the case of the petitioner that respondent No.3-society passed resolution dated 13.3.07 and elected the present petitioner to represent the respondent No.3-society in the respondent No.2-federal society. However after sending the name of the present petitioner as representative of respondent No.3-society the respondent No.3-society yet again passed another resolution dated 9.7.07 where under respondent No.4 is elected and chosen to depute as representative of respondent No.3-society on respondent No.2-federal society. After passing of the resolution on 9.7.07 respondent No.3 intimated the Collector the change in the name of the representative of respondent No.3-Society. The Collector after granting opportunity of hearing to the present petitioner has passed the order on 12.7.07 deleting the name of the petitioner and directing the inclusion of the name of the respondent No.4 in place of petitioner as

delegate of respondent No.3-society in the final list of voters. The Collector has published the election programme under rule 16 on 13.7.07. In the above factual back drop of the relevant dates the learned counsel for the petitioner submits that the Collector could not have permitted the change in the name of delegate of respondent No.3-society as according to the learned counsel such a change could have been only permitted till 6.7.07 i.e. seven days before the publication of the programme under rule 16 as that would be the date of making nominations. In other words, the submission is that the date appointed by the Collector under rule 16 should be taken to be the first date of making of nominations whereas according to the learned counsel for the respondent the phraseology “seven days before the date appointed by the Collector under rule 16” refers to the last date of making nominations. The last date of making of nominations would be seven days from the date of order of the Collector, meaning thereby 21.7.07 and thus the Collector could have permitted the change of the name of the delegate on 12.7.07. Learned counsel for the respondent has placed reliance on a judgment of learned Single Judge of this Court reported in the case of Shivnarayan Amarchand Paliwal v/s Vasantrao Vithalrao Gurjar & Ors., 1992 Mh.L.J. 1052. Learned Judge was called upon to pronounce on this very issue and in para 14 the learned Judge observed thus :

“As such the date as notified under rule 16 in the notice of sub-rule (2) of rule 5 would be only the last date for filing of nominations and could not be permitted to mean the entire period prescribed for filing nomination.”

The only difference in the situation when the said judgment was delivered was that in the first stage of the programme published by the Collector under rule 16 a period of 15 days was prescribed for

nomination which under the present rule 16 is for a period of seven days. I am in agreement with the view taken by the learned single judge and thus there is no merit in the writ petition. Writ petition is thus summarily dismissed. Learned counsel for the petitioner also submits that he did not have adequate opportunity of establishing other facts which could go to show that the resolution purported to have been passed on 9.7.07 was not so really passed by majority of the managing committee members. I do not see any merit in the said contention. Even otherwise now the election process has reached almost final stage and the voting is to take place on 27.8.2007. No interference with the process of election at this stage would be permissible as any interference at this stage is bound to result in obstruction of the election process which is impermissible as held by the Supreme Court of India in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. V/s State of Maharashtra & Ors. AIR 2001 SC 3982.

24.7.07